

movement of passengers or cargo by one or more modes of transportation and includes a waterborne movement leg in the overseas, coastwise, intercoastal, inland waterways, or Great Lakes shipping trades.

(t) *Vessel* means a vessel employed in commercial service for waterborne movement of passengers or cargo in the overseas, coastwise, intercoastal, inland waterways or Great Lakes shipping trades, or any portion of the cargo-carrying capacity of such vessel.

(u) *Vessel operator* means a company owning and/or operating, to and from any U.S. port, an ocean-going overseas, coastwise, intercoastal, inland waterways or Great Lakes vessel that is U.S.-flag, or foreign-flag and U.S.-citizen controlled (pursuant to 46 App. U.S.C. 802), or foreign-flag and non-citizen controlled that is made available to the United States (as described in § 340.3(j)).

#### § 340.3 General provisions.

(a) The provisions of this rule apply pursuant to authority granted to the President by title I, Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) that authority having been delegated to the Secretary of Transportation, with respect to civil transportation services, by § 322.3(b) of title 44, Code of Federal Regulations. In order to give priority to performance under contracts deemed necessary or appropriate to promote the national defense and to allocate materials and facilities in such manner, upon such conditions and to such extent as necessary or appropriate to promote the national defense, the following procedures shall be applicable:

(1) In connection with deployment of the Armed Forces of the United States, or other requirements of the nation's defense, a defense agency (as defined in § 340.2(h) of this part) may request priority use or allocation of vessels employed in commercial shipping services, containers, chassis, or port facilities and services.

(2) The Secretary may authorize initiation of priority and allocation authority in accordance with administrative and statutory authorities.

(3) The Administrator, on approval by the Secretary to initiate the use of

priority and allocation authority under this regulation and in conformance with national program priorities, may direct owners and/or operators of vessels, containers, chassis, or port facilities to give priority usage to the defense agency or may allocate vessels, containers, chassis, or facilities for the defense agency's use during specified periods.

(b) A defense agency may transmit requests for assignment of priority for use or for allocation of vessels, containers, chassis, and port facilities and services to the Secretary by letter, memorandum, or electrical message.

(c) Justification for requested priorities or allocations may include references to military operations plans. When classified, justifications may be provided separately by correspondence or staff coordination. NSPOs and NAOs will not include classified information.

(d) The Administrator shall determine, before issuing an NSPO or NAO, that the action is necessary to meet the requirements of the national defense (as determined by the defense agency) and conforms to Secretarial guidance for coordinating the Department's crisis response, and that the proposed approach is the most effective way to do so. The Administrator, in conjunction with the defense agency, shall coordinate with vessel operators, container suppliers, chassis suppliers, port authorities and the Coast Guard to identify vessels, equipment and facilities to meet requirements covered by NSPOs and NAOs. The Administrator shall ensure that arrangements to provide defense support under NSPOs and NAOs satisfy the defense agency's requirements with minimum disruption to commercial activities.

(e) When resources are required for movement of hazardous or other special cargo, the Administrator shall ensure that the Commandant of the Coast Guard and the Captain of the Port and other concerned hazardous materials officials of the U.S. Department of Transportation, as required, are notified and that the views of all concerned agencies and interests are obtained and reflected in actions taken pursuant to this regulation. Any action taken pursuant to this regulation shall conform with existing regulations for the safe

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transportation of hazardous materials and or cargoes, subject to Department of Transportation exemptions.

(f) The Secretary shall notify FEMA of the intention to issue any directive granting priority for use or allocation of vessels, containers, chassis, or port facilities and services, and shall provide information copies of NSPOs and NAOs as required to the defense agency concerned, FEMA, the Interstate Commerce Commission and the Coast Guard.

(g) Defense agencies which foresee difficulty in meeting their needs for vessels employed in commercial shipping services, containers, chassis, or port facilities and services shall coordinate with MARAD, the Coast Guard, vessel operators, container suppliers, chassis suppliers, and port authorities concerned before the need arises. The Administrator, after Secretarial review, may issue planning orders for information and guidance of affected agencies confirming tentative arrangements to meet the defense agencies' needs. No action will be taken to give effect to those arrangements until NSPOs and NAOs are issued at the time the services, equipment, or facilities are required.

(h) Defense agencies shall pay for services covered by NSPOs and NAOs on the basis of commercial tariffs, or on the basis of contracts concluded between the operator interests and the defense agencies concerned, or on the basis of existing contracts where both parties so agree.

(i) Defense agencies shall be responsible for payment of costs arising from:

(1) Shifting ships to unoccupied berths for defense use;

(2) Discharging commercial cargo to free ships for defense use; and

(3) Such other costs as may be agreed between the defense agency and the provider of service.

(j) The provisions of this regulation shall apply to foreign vessels, containers, and chassis only when and to the extent that such vessels, containers, and chassis are available to the United States because of control by U.S. citizens (46 App. U.S.C. 802) or by provision of international agreements for use of shipping services and related resources for the common defense.

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(k) Recipients of NSPOs and NAOs shall notify the Administrator, without undue delay, when they cannot comply or are experiencing difficulty in complying with the provisions of the Orders.

#### § 340.4 Shipping services.

(a) When a defense agency requires shipping services not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

(i) The type of service required;

(ii) The route over which priority of service is required;

(iii) The period during which priority of service is required; and

(iv) Justification for priority use of the requested service.

(2) The Administrator, pursuant to the circumstances specified in § 340.4(a)(1), shall identify vessel operators that can provide the necessary service and issue NSPOs in coordination with the Secretary to those operators directing that priority be given to the movement and delivery of the defense agency's cargo and/or passengers by the type of service specified in the NSPO during the specified period.

(3) Each vessel operator in receipt of an NSPO shall:

(i) Give precedence to the cargoes of the defense agency in provision of equipment, loading, ocean transport and delivery; and

(ii) Coordinate with other operators in receipt of NSPOs applicable to the same priority movement program to ensure movement of the defense agency's cargoes on first available sailings.

(b) When a defense agency has need for vessels employed in commercial service on a continuing basis for national defense operations for a specified period or for the duration of a defense emergency which they cannot obtain through established transportation procurement practices, the following procedures shall apply: